



February 8, 2019

Nick Flor

Sent via email to: *nickflor@unm.edu*

Re: Preliminary Letter of Determination for OEO# I-2018-08-43

Dear Professor Flor,

The purpose of this correspondence is to relate to you the proposed finding regarding the above-referenced civil rights claim. Eva Chavez (herein Complainant), Graduate Student, asserts that she was subjected to Sexual Harassment and Retaliation. Complainant asserts that Nick Flor (herein Respondent), Associate Professor, Anderson School of Management, subjected her to both forms of discrimination.

The Office of Equal Opportunity (OEO) is prepared to issue a finding of a POLICY VIOLATION with regard to Complainant's assertion of Sexual Harassment and a finding of a POLICY VIOLATION with regard to Complainant's assertion of Retaliation.

OEO will move forward with these determinations unless additional new factual information can be provided. The additional information must reveal facts not yet discovered during the course of the investigation. Any additional information must be provided to OEO no later than five (5) business days of the date of this correspondence. All additional new factual information will be evaluated before a final determination is made.

I. APPLICABLE UNIVERSITY GUIDELINES OR POLICIES

- University Policy #2740 Sexual Misconduct

This policy can be found on the UNM Policy Office website at <http://policy.unm.edu/university-policies/index.html>.

II. BACKGROUND

The record shows OEO contacted Complainant on July 13, 2018 in regards to a complaint filed against her and met with Complainant on July 25, 2018 to discuss the allegations against her. At this meeting Complainant reported that she had been harassed by Respondent and requested to file a formal complaint.

Melissa Valdez-Lopez (herein Valdez-Lopez), EEO Compliance Specialist, was initially assigned the investigation.

Valdez-Lopez informed Complainant about OEO's investigative procedure, her rights and responsibilities, confidentiality, and the University's anti-retaliation policy. Complainant provided a verbal complaint to Valdez-Lopez on July 25, 2018, naming Respondent. Complainant elected to have a support person present at the meeting.

On August 1, 2018, Complainant was informed OEO accepted jurisdiction of the issues she presented.

On August 3, 2018, Complainant was informed that Ben FitzSimons, a third-party, contracted investigator, had been contracted to conduct the investigation. The investigator contacted Complainant via email on August 10, 2018 and August 14, 2018. Complainant responded on August 14, 2018 and arrangements were made to speak on the telephone on August 21, 2018.

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A draft Confirmation of Allegations was provided to Complainant on August 22, 2018. Complainant noted a number of revisions in her Confirmation of Allegations and requested an extension of the deadline to provide the revisions. Complainant was informed any additional information and evidence would be included in the Draft Report. On September 11, 2018, Complainant confirmed the issues to be investigated via a signed Confirmation of Allegations.

The record shows Investigator FitzSimons contacted Respondent via email on August 10, 2018. Respondent responded on August 10, 2018 and arrangements were made to speak on the telephone on September 12, 2018.¹

Investigator FitzSimons provided Respondent a draft Confirmation of Response on September 25, 2018, and he returned the Confirmation of Response on September 30, 2018, with revisions. On October 2, 2018, Investigator FitzSimons provided Respondent with a revised Confirmation of Response, which he signed and returned on October 2, 2018.

On December 14, 2018, the parties were notified that the investigation would be concluded by Sara Cliffe (hereinafter “the investigator” or “Investigator Cliffe”) in the OEO. On January 14, 2019, the investigator delivered an Addendum to the Draft Report to the parties, containing clarifications to the Draft Report and additional evidence submitted by the parties in response to the Draft Report that was determined to be relevant.

Relevant emails, text messages, and information provided by Complainant and Respondent is summarized under Documentary Evidence. No other witnesses or relevant documentation was identified.

III. COMPLAINANT’S STATEMENT

Complainant described the relevant events establishing the basis of this claim as follows (edited):

Sexual Harassment

- Complainant states that she first met Respondent on May 9, 2018.
- Complainant states that approximately 10 years ago her brother had taken an undergraduate course with Respondent and suggested that if the opportunity ever presented itself, she should try to take a course with him. Complainant states that after meeting Respondent for the first time, she considered taking one of his courses in the future, if there were to be a graduate-level option available.
- Complainant states that she sent Respondent an email, via their UNM email accounts, on May 11, 2018 to inquire whether he was teaching any graduate-level classes.
- Complainant states she and Respondent began to exchange emails and that on May 13, 2018, Respondent suggested they switch to personal email accounts, citing that UNM email could be “spied on.”
- Complainant states that shortly after switching to personal Gmail accounts Respondent began to talk about them working together and publishing together. Complainant states that Respondent indicated that he and Complainant were best friends. Complainant states that Respondent indicated that they were destined to meet.
- Complainant states that she and Respondent created a spreadsheet to track all of the things they were going to do together and that they both added entries and updated the list (emailing the revised spreadsheet back and forth with the updates).
- Complainant states she does not recall if she asked about a job opportunity or if Respondent originally offered, but that on May 21, 2018, Respondent initiated a formal request to hire her as a Project Assistant.
 - Complainant states this communication was sent by Respondent through the University of New Mexico's email system to Robin Luann Love, Tammy Cline, and Darlene Trujillo. The budget was

¹ Note that Respondent also has an active OEO investigation as Complainant and the telephone meeting regarding that claim occurred on an earlier date.

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\$703. Complainant states the subject line of the email initiated by Respondent was *Need to Hire PA for Index Code: 224384*.

- Complainant states that on May 23, 2018 she told Respondent she had not consumed alcohol in 18 months. Complainant states Respondent began indicating to her that he would “get her to drink alcohol again”. Complainant states that these types of comments concerned her and raised “red flags” in regards to working with an instructor who jokingly (or not) made these types of comments to a student and potential PA employee.
- Complainant states that around May 26, 2018 Respondent initiated multiple communications of an explicit sexual nature. Complainant states examples include, but are not limited to:
 - An email sent on May 26, 2018 where Respondent told Complainant he wanted to “make love” to her at school in his new office. Complainant asserts Respondent indicated he wanted it to happen soon, and in real-life. Complainant states she responded that it was not a good idea and asked why he wanted to do that. Complainant states Respondent replied, “So when I go into my office I’ll always remember you.”
 - An email sent on May 27, 2018 where Respondent stated that he “needed to be deep inside” the Complainant “from behind,” with a mirror in front of them so he could see himself caressing Complainant while he was “lost deep inside” of her. Complaint states Respondent indicated he wanted to do this until he could not take it any longer and that he would “risk everything” to “explode inside” of Complainant while whispering her name, “Eva...mmm.”
 - An email sent on June 5, 2018 where Respondent stated to Complainant, “...and we’re doing it with no protection because it feels so good and I know I should stop but all I can do is whisper your name over and over ‘Eva, mmm...’”
 - An email sent on June 5, 2018 where Respondent stated to Complainant, “Just imagine me on top of you, our bare skin sliding over each other, my mind telling me to stop before I explode, but my body thrusting deeper in you... while I whisper ‘Eva we have to stop...mmm Eva, we have to ... mmm Eva.’”
- Complainant states that she was uncomfortable with and did not know how to respond to the Respondent's messages of a sexual nature, however, she initially did respond based on the promises he made about working together on projects including the offered Project Assistantship, as well as publishing articles and books together.
- Complainant states that another reason she responded to Respondent's messages was due to the inherent power differential involved because Respondent was an instructor and the supervisor, and Complainant was a student and subordinate. Complainant states this element created an awkward and confusing dynamic that she felt could possibly hurt her education, employment, future assistantships or job opportunities, recommendations for graduate study, promotion, etc. Complainant states she was concerned that “a teacher or supervisor can have a decisive influence on a student’s or employee's success and future career at the University and beyond” as stated in the University's Policies and Procedures.
- Complainant states she was also fearful that Respondent would retaliate against her if she reported her concerns.
- Complainant is unsure of the exact date, but states that she was concerned that the Project Assistantship job opportunity was not worth it based on the hours and pay (~4 hours per week for 8 weeks), and due to the instructor's messages of an explicit (and implicit) sexual nature. Complainant states she sent Respondent an email expressing these concerns.
- Complainant states that after she expressed concerns, Respondent’s communication changed. Complainant states that she sent Respondent multiple emails to ask him to talk to her about the job (and other things Respondent had suggested, like publishing articles and books together) and that he would not do so.
- Complainant states Respondent eventually told her he was going to spend the \$703 on “brain wave equipment” instead of the Project Assistantship because “the brain wave equipment opens up many more research avenues.”

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- Complainant asserts that submission to Respondent's emails of a sexual nature was an implied condition of the Project Assistantship job opportunity and that when she voiced a concern about the job, and working with Respondent, she was denied the job opportunity.
- Complainant also asserts that submission to Respondent's emails of a sexual nature was the intent and basis for Respondent offering the Project Assistantship to Complainant.

Retaliation

- Complainant states that on June 24, 2018 at 10:28 am she expressed her intent (to Respondent) to reply back to the UNM PA emails screenshots of Respondent's emails of an explicit sexual nature, and state on the email reply, "Has anybody heard from Nick? He sent me the attached correspondence on June 5th, and I have not heard much from him since?"
- Complainant states that on June 27, 2018 at 2:31 pm she responded to the same email (mentioned above with subject line: Mary Margaret Rogers) and expressed her intent to reply back to the UNM PA emails with screenshots of Respondent's emails of an explicit sexual nature. Complainant asserts in this second email she stated, "Just curious as to if you think I'm kidding when I say I am going to go back on that PA email and send the screenshots attached and asked if anybody has heard from you?"
- Complainant states that on July 2, 2018 at 8:07 am she expressed her intent to report what she perceived as Respondent's sexual misconduct to Kathryn Jacobson, Associate Dean at the Anderson School of Management, stating, "BTW, I'm meeting with Kathryn Jacobson next week...and not on my own volition (nor did I set the meeting up myself, believe it or not)it was requested of me..." Complainant states she then mentioned, "Wish we could've touched based prior to and after you blatantly ignoring me because I'm confused as what to say or not say...but I suppose I'll just take your advice."
- Complainant states that on July 2, 2018 at 9:56am, Respondent texted, "Please stop communicating with me." Complainant asserts this was the first time Respondent had asked her to stop communicating with him.
- Complainant states that on July 2, 2018 at 1:16 pm she received an email titled "Communication Ban and Behavioral Expectations" from the Dean of Students office.
- Complainant states that Respondent requested a "Communication Ban" from the Dean of Students office because she expressed her intent to report concerns regarding Respondent's sexual misconduct.
- Complainant states that the action taken by Respondent that initiated the "Communication Ban and Behavioral Expectations" correspondence negatively affected her reputation and educational experience at the University and, as such, may have negatively affected her educational advancement opportunities at the University as well as future employment opportunities at the University.

IV. RESPONDENT'S STATEMENT

Respondent's statement (edited):

Sexual Harassment

- Respondent states that on or about May 10, 2018 Complainant introduced herself to him in a copy room. Respondent states that Complainant said something like, "Hey, are you Nick Flor, my brother had a class with you. You're a great instructor."
- Respondent states he had never met Complainant before.
- Respondent states that on May 11, 2018 Complainant sent him an email and that they quickly developed an online friendship.

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- Respondent states that he never met Complainant in person again, that he and Complainant spoke on the telephone approximately three (3) times, and that the rest of their communication occurred via email, text messages, and social media.
- Respondent states that he suggested moving their email conversation to personal email accounts because Complainant wanted to gossip about other faculty and she asked where to send the gossip.
- Respondent states that Complainant initiated conversations about them working together and that Complainant initiated the discussion regarding a possible Project Assistantship.
- Respondent states that complainant initiated conversation regarding publishing a report together about propaganda in the book 1984. Respondent states that the Project Assistantship offer that he made to Complainant would have been paid out of a grant and that publishing is a standard action when working under a grant.
- Respondent states that they used the nickname “B” for one another, and complainant suggested that it stood for “bff”, which she clarified as “best friends forever”, and that they both discussed it.
- Respondent states that in her very first e-mail to him, Complainant said they were destined to meet and requested to meet and chat. Respondent states that Complainant initiated social topics, including the “synchronicity” of their meeting and meeting in past lives, that she frequently referenced the song “Past Lives” by Borns, that she stated she was communicating with him in the past using the number 3:33. Respondent states that he initially started to believe her but ultimately did not, and Respondent states that is one of the key reasons he ended their relationship.
- Respondent states that Complainant initiated and created a spreadsheet to track things they had planned to do together, that she demanded that he add to it, and that they both added to it.
- Respondent states that he told Complainant he would get her to drink again “once a day” after she stated she had not consumed alcohol in 18 months, but that he had previously told her he liked only one drink a day to relax, and that he made it clear to her that the statement was a joke and that he was not going to get her drinking again; he did not say anything like it again after Complainant indicated she was serious.
- Respondent states that although he made the first comments of an explicitly sexual nature, Complainant initiated the sexual communication. As examples, Respondent states that Complainant told him “cuddling” was better than swimming when discussing ways to ease her chronic pain on May 24, 2018 and that Complainant kept a conversation on May 25, 2018 focused on “romance” after he attempted to redirect it.
- Respondent states that all communication of a sexual nature was consensual (based on Complainant’s responses and interaction) and that Complainant encouraged Respondent to tell “romantic stories.” Respondent also states that Complainant indicated she wanted to have “lots of” sex with him to remove her pain.
- Respondent states that Complainant never expressed that she was concerned about the communication of a sexual nature and that she never asked him to stop communicating in that manner.
- Respondent states that the only concern that Complainant voiced was that the Project Assistantship was not enough hours to be worth it to her so she ultimately turned it down.
- Respondent denies that submission to emails of a sexual nature was an implied condition of the Project Assistantship job opportunity and that when Complainant voiced a concern about working with Respondent, she was denied the job opportunity.
- Respondent denies that submission to communication of a sexual nature was the intent and basis for Respondent offering the Project Assistantship to Complainant.

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Retaliation

- Respondent states that Complainant never expressed to him that she perceived their sexual communication as harassing or misconduct.
- Respondent states that after he expressed to Complainant that he could not be her close friend or have a romantic relationship with her, and that after he liked a tweet from a former female student on Twitter, that Complainant threatened to forward their prior sexual communication to multiple individuals at the University. Respondent states these threats did not express that Complainant felt the communication was harassment or misconduct, rather that Complainant was angry that Respondent would no longer engage in the behavior and wanted revenge, and that Complainant stated she was willing to lie to get revenge.
- Respondent states that he did not request the stop contact email from the Dean of Students office; the office offered to send the email after viewing text messages that Complainant sent to Respondent.

V. OTHER EVIDENCE

Documentary Evidence²:

- The investigator reviewed 5476 emails³ and 185 text messages exchanged between May 11, 2018 and July 2, 2018.
- Data:
 - Complainant sent 3258 emails.
 - Respondent sent 2218 emails.
 - Complainant and Respondent both initiated and responded to the other's emails.
 - Complainant sent 174 text messages.
 - Respondent sent 11 text messages.
 - 203 emails of an implicit and explicit sexual nature were exchanged, ranging from exchanges of romantic or love-based songs to graphic descriptions of sexual intercourse.⁴
 - Complainant sent 134 emails of an implicit or explicit sexual nature.
 - Respondent sent 69 emails of an implicit or explicit sexual nature.
- Email initiated by Complainant dated May 11, 2018 (titled "2018 Fall Grad Courses" sent at 5:08 am), references first email communication and Complainant indicating their meeting "was likely meant to happen." **Exhibit A1.**
- Email initiated by Complainant dated May 11, 2018 (titled "2018 Fall Grad Courses" sent at 6:06 pm), references Complainant telling Respondent "I'm not one of your grad students though..." after asking what Respondent would like to be called and Respondent indicating what students call him. **Exhibit B1.**
- Email initiated by Complainant dated May 12, 2018 (titled "Car Accident" sent at 8:36 pm), references Complainant stating she was on a "healing journey" and "can not find anyone to help me heal." Also references that Complainant has video footage she took on public buses and a suggestion that she and Respondent could collaborate on a project using the footage. **Exhibit C1.**
- Email from Respondent dated May 13, 2018 (titled "18-year old Bitcoin millionaire" sent at 9:53 am), references Respondent stating "haha no, everything on UNM e-mail can be spied on! Send them to google

² All correspondence noted in this section is between Complainant and Respondent, except when indicated. The volume of correspondence is such that every relevant email is not noted in this list. Some emails are noted because of their specific content; others are noted to reflect a broader pattern of communication. Emails that reflect a pattern are noted as such.

³ A small number of emails were duplicates so the number of unique items is closer to 5400.

⁴ Not all songs exchanged were romantic or love-based, but some that were became points of romantic or sexual conversation.

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hangouts chat or e-mail (professorf@gmail.com)" in response to Complainant stating she was going to send cryptic messages about "all the hidden insights I know about faculty members ha!" **Exhibit D1.**

- Email from Complainant dated May 14, 2018 (titled "Sweet dreams..." sent at 2:14 pm), references Complainant suggesting that they should "tentatively plan a GA in future times." **Exhibit E1.**
- Email initiated by Complainant dated May 14, 2018 (titled "Xfiles. GP.IMG_4767.jpg" sent at 10:59 pm) references an image with a male UNM instructor and a woman; the woman's left breast is circled and the man's pubic area is circled. **Exhibit F1.**
- Email from Respondent dated May 17, 2018 (titled "Synchronicity & Hummingbirds too" sent at 4:48 am), references Respondent telling Complainant that they were "probably meant to do something great together" and references Complainant responding affirmatively at 10:27 am, stating "we shall definitely do something great together.... and there's not a doubt in my mind that we were meant to cross paths...." This exhibit reflects the broader context of communication at this point in time. **Exhibit G1.**
- Email initiated by Complainant dated May 17, 2018 (titled "When is your birthdate?" sent at 11:09 am), references Complainant requesting Respondent's birthdate so she can "see what the secret language says" about their birthdates. **Exhibit H1.**
- Email from Complainant dated May 17, 2018 (titled "Omg this is immediate stress" sent at 12:35 pm), references Complainant indicating she wanted to email Respondent regarding "GA stuff." **Exhibit I1.**
- Email initiated by Respondent dated May 17, 2018 (titled "Re: GA"), references (**Exhibit J1**):
 - Respondent informing Complainant that he may have an assistantship opening the following semester if grant money comes through and indicating that if Complainant was willing to learn and perform analytics he may be able to hire her. (4:10 pm)
 - Complainant indicating that she already had an assistantship for the following semester and asking if Respondent had any funding for the summer "even if it is a few hours per week." (4:14 pm)
 - Respondent indicating it would be "awesome" if they could study "viral spreading of information on twitter" and stating that he may have some summer funding. (4:24 pm)
 - Complainant indicating that she wanted to work for Flor as a "PA/GA" (i.e. project or graduate assistant) over the summer "even if it's like 10 hrs per week or whatever" and that they should "definitely make it happen." (4:31 pm)
- Email initiated by Complainant dated May 17, 2018 (titled "Borns – past lives" sent at 8:12 pm), references Complainant sending a song with love-based or romantic lyrics. Also, response from Respondent at 8:14 pm, references Respondent's affirmative response to the song and stating that Complainant is "magical or something." **Exhibit K1.**
- Email from Respondent dated May 18, 2018 (titled "WR theories" sent at 8:57 am), references Respondent stating that he was determining whether Complainant had a "significant other" and Complainant responding that he could have just asked her. **Exhibit L1.**
- Email initiated by Complainant dated May 18, 2018 (titled "PA \$" sent at 2:44 pm), references Complainant asking Respondent if he'll be able to arrange a summer assistantship. **Exhibit M1.**
- Email initiated by Complainant dated May 18, 2018 (titled "Die Young – Sylvan Esso sent at 9:33 pm), references Complainant sending a song with love-based or romantic lyrics. Also response from Respondent at 10:12 pm that the song is about them and Complainant's affirmative response at 10:15 pm. **Exhibit N1.**
- Email initiated by Respondent dated May 18, 2018 (titled "Some news, but only \$703"), references (**Exhibit O1**):
 - Respondent informing Complainant that he only has \$703 left in his grant that could be applied to an assistantship (4:55 pm)
 - Complainant replying that she would take it and that she wouldn't be upset or disappointed if it didn't work out, that she wasn't "worried about the \$ or amounts per se, but anything helps...", and "35 hours for 7 weeks is fine if that's all there's availability for...." (May 19, 2018 at 1:58 am)

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- Emails initiated by Complainant, references Complainant sending "love horoscopes" for their birth signs (**Exhibit P1**)⁵:
 - Dated May 19, 2018 (titled "Horoscopes 05/19/18" sent at 10:10 pm), asked Respondent for his thoughts. Complainant sent horoscopes unrelated to love at 3:33 am as well.
 - Dated May 22, 2018 (titled "Horoscopes 05/22/18" sent at 10:41 pm).
 - Dated May 25, 2018 (titled "Aries 005/25/18" sent at 7:48 am).
 - Dated May 26, 2018 (titled "Horoscope 05/26/18" sent at 10:21 pm), implicitly referred to herself as the "lover" in the horoscope.
 - Dated June 5, 2018 (titled "Horoscopes 06/05/18" sent at 3:27 pm), asked Respondent for his thoughts. Respondent responded with sexual content. Complainant replied with sexual content.
 - Dated June 6, 2018 (titled "Horoscope 06/06/18" sent at 2:37 pm).
 - Dated June 9, 2018 (titled "Horoscopes 06/09/18" sent at 10:53 pm), asked Respondent for his thoughts.
 - Dated June 10, 2018 (titled "More horoscopes 06/10/18" sent at 10:25 pm), asked Respondent for his thoughts.
- Email from Complainant on May 19, 2018 (titled "Some news, but only \$703" sent at 2:30 pm), references Complainant stating, "the synchronicity keeps happening... and is strong..." **Exhibit Q1**.
- Email from Respondent on May 19, 2018 (titled "Horoscopes 5/19/18" sent at 5:57 pm), references Respondent offering a pact to work together at 5:45 pm and Complainant responding by offering a "friendship pact" at 5:55 pm, and Respondent agreeing at 5:57 pm. **Exhibit R1**.
- Email from Complainant on May 19, 2018 (titled "JB Files" sent at 6:14 pm), references Complainant stating that Respondent's love of playing the guitar is "WAY too synchronous" and that the "synchronicity here runs WAY to DEEP" as well as that it "just kinda went to another stratosphere buddy." **Exhibit S1**.
- Email initiated by Complainant on May 20, 2018 (titled "All about an Eva..." sent at 12:06 pm), references Complainant telling Respondent that "the synchronicity [of their meeting] is real." This exhibit reflects the broader context of communication at this point in time, with both parties indicating their meeting was "synchronous." To this point Complainant has stated on multiple occasions things like "all of these synchronicities are real" and that the universe had them meet; Respondent has agreed. **Exhibit T1**.
- Email from Respondent on May 20, 2018 (titled "Immortal Man" sent at 3:03 pm), references Respondent telling Complainant that she is his "new bestie." At 3:08 pm Complainant states the Respondent is her "new bestie" as well. **Exhibit U1**.
- Email from Complainant on May 20, 2018 (titled "Hey, I'll respond" sent at 6:28 pm), references Complainant indicating she will create a checklist of things they will do together and send it to Respondent. This is completed in the email titled "Task List: Important" sent on May 20, 2018 at 11:20 pm. **Exhibit V1**.
- Email from Respondent on May 21, 2018 (titled "Need to Hire PA for Index Code: 224384" sent at 1:42 pm), references Respondent sending an official UNM email to initiate an assistantship for Complainant. **Exhibit W1**.
- Email from Respondent on May 21, 2018 (titled "2018 Mid-Year Investment Outlook...Facebook Co-Founder Chris Hughes on Fighting Inequality...Taking China's Stock Market Global" sent at 3:38 pm), references Complainant asking what "B" stands for (Respondent has begun to call her that) and Respondent responding "Bestie, Buddie and all the other good B-words". **Exhibit X1**.
- Email thread on May 21, 2018 (titled "The Big Spank – Velvet Cheeks," references (**Exhibit Y1**):
 - Complainant stating that Respondent massaging her back (to try to relieve chronic pain) would be "desperately helpful" but could be "misunderstood", Complainant then stating "Yet perhaps anything misconstrued could also be an inevitability... not sure." (7:31 pm)
 - Respondent responding, "Well if it helps relieve your pain, who cares what others think is inappropriate!" (7:40 pm)
 - Complainant responding, "Very true. What do you think is appropriate?" (7:55 pm)

⁵ Complainant also initiated emails with non-romantic daily horoscopes. These were not catalogued for the investigation.

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- Respondent responding, "Anything that helps relieve you of pain!" (8:03 pm)
 - Complainant responding, "Anything?" 8:10 pm)
 - Respondent responding, "Yep!" (8:21 pm)
- Email initiated by Complainant on May 21, 2018 (titled "past lives // borns lyrics" sent at 11:29 pm), references Complainant stating, " I do feel like we've met before and I do feel like you can understand and/or at least communicate with me and *get* my sense of humor.... better than most ..." Also references Respondent responding at 5:15 am " lol that song's about me and you." **Exhibit Z1.**
- Email from Respondent on May 22, 2018 (titled "Dr Wayne Dyer Interviews Abraham Hicks – interview" sent at 8:30 pm), references Respondent telling Complainant "I wish I was there to caress the pain away" when she mentions her chronic back pain. **Exhibit A2.**
- Email from Respondent on May 23, 2018 (titled "past lives//borns" sent at 8:17 am), references Respondent asking Complainant to continue sending songs. **Exhibit B2.**
- Email from Complainant on May 23, 2018 (titled "I cried ☺" sent at 7:40 pm), references Complainant expressing that she is upset because Respondent referred to an individual who channels spirits as "cray cray" and that she does not " understand why your scientific mind is trying so hard to be skeptical about my life and day to day existence....." Also references Respondent responding at 9:10 pm that he does not feel their meeting was coincidence and that "It's like we've been drawn together finally, after ages of looking for each other. And you've been doing all these things in the past and collecting information for me and to prove to me this connection is real. And finally, I didn't tell you this, but you're constantly on my mind. Like I'm supposed to do something important with you, and this is my last chance. Anyway, that probably doesn't make sense but it's what's on my mind." **Exhibit C2.**
- Email from Respondent on May 24, 2018 (titled "More 'Eva' stuff everywhere lmao" sent at 4:55 pm), references Respondent indicating he and Complainant were "probably passionate lovers" in a past life in answer to an email he sent on May 23, 2018 where he stated "I wonder what we were in our past lives." **Exhibit D2.**
- Email from Respondent dated May 24, 2018 (titled "Man does not remember..." sent at 5:10 pm), references Respondent stating that "all your songs relate to us in some way." **Exhibit E2.**
- Email from Complainant dated May 24, 2018 (titled "The Emails – Holographic" sent at 6:45 pm), references Complainant reminding Respondent that she is not one of his students. **Exhibit F2.**
- Email thread dated May 24, 2018 (titled "Wordcloud"), references **Exhibit G2:**
 - Complainant telling Respondent that she does not like using swimming pools (in response to Respondent suggesting she use swimming to ease her chronic back pain) but that "cuddles, healing vibes, and caring intuition" would help her pain. (6:38 pm)
 - Respondent responding, "when you tell me you're in pain, I just want to cuddle you and stroke you hair and caress you to sleep" (6:44 pm)
 - Complainant responding, "Cuddling is one of my all-time favorite past-times" (8:15 pm)
 - Respondent responding, "Can I caress your hair and kiss you on the neck too?"
 - Complainant responding, "Perhaps.....If/when the timing is right? And, If that leads to something more?" (8:50 pm)
 - Respondent responding, "it will be the most romantic thing we've ever experienced, hopefully under a crescent moon." (9:05 pm)
- Email thread dated May 24, 2018 (titled "Everybody is playing their parts..."), references the broader context of the conversation at this point, with both parties participating in flirtatious language (**Exhibit H2**):
 - Complainant initiating email to say "And you and I met for a reasons...No doubt!" (May 23, 2018 at 12:43 am)
 - Respondent responding, "It's true! We were meant to get together and do something." (May 23 at 8:07 am)
 - Complainant responding, "what do you want to get together and do ? lol." (5:04 am)
 - Respondent responding, "Everything!" (4:51 pm)

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- Complainant responding, "EVERYTHING?? Are you sure??!" (7:56 pm)
- Respondent responding, "If it's what you need. Everything. Cuddling and all." (8:14 pm)
- Complainant responding, "Everything. Cuddling...And ALL?" (8:44 pm)
- Respondent responding, "all and more!" (8:46 pm)
- Complainant responding, "You'll have to tell me more about this sometime.....I want to know!!!" (9:20 pm)
- Respondent responding, "It's slow and excruciatingly romantic." (9:24 pm)
- Complainant responding, "Excruciatingly romantic? Sounds great, now you must tell me more!! Do tell." (9:37 pm)
- Email from Respondent on May 25, 2018 (titled "Breathing" sent at 5:17 am), references Complainant telling Respondent that she was having difficulty breathing and him responding that she should "take a hot shower, that usually helps with the breathing (and imagine me in the shower with you too :-)" **Exhibit I2**.
- Email thread on May 25, 2018 (titled "Aries 005/25/18"), references the broader context of the conversation at this point, with both parties participating in escalating flirtatious language (**Exhibit J2**):
 - Complainant sending a "love horoscope" and saying she needs to rest. (7:47 am)
 - Respondent responding, "Okay babe, but you'd better rest and stop typing." (8:48 am)
 - Respondent responding again, "That horoscope makes me want to make sweet love to you right now. But get your rest!" (9:01 am)
 - Complainant responding, " You calling me' babe'totally makes me feel a certain way...☺💞💞" (9:14 am)
 - Respondent responding, "Sorry I typed all that romantic stuff and distracted you. You have me feeling a certain way too. I'm not sure how it happened, but it feel so right." (9:20 am)
 - Complainant responding, "easy does it, and I really do want (and need) your friendship and support long-term.... so whatever we can do over-time to maintain that..." (9:36 am)
 - Respondent responding, "I think we did a lot of romance in our past lives. Let's focus in this life on doing great things (book, research, etc)!!!" (2:26 pm)
 - Complainant responding, "So, no romance in the lifetime then? After you have me all feeling a certain way...Romance, sounds a bit more comforting than a book and research atm, but we'll do Great things indeed...." (3:49 pm)
- Email initiated by Complainant on May 25, 2018 (titled "Scorpio daily 05/25/18"), references the broader context of the conversation at this point, with both parties participating in sexual language (**Exhibit K2**):
 - Complainant telling Respondent "Also, you calling me babe, and the thought of you making sweet love to me....it sparked something inside of me...And got me all feeling a certain way (all woozy like) " and "there is my truth for today... everything I tell You is my truth, but thinking of you (in this way) is definitely what's on my mind today...." (4:29 pm)
 - Complainant telling Respondent "I want to tell you all my secrets and show you all my magic, and explore all sorts of magical realms that you cannot even imagine or comprehend, yet....." (4:38 pm)
 - Respondent responding, "I'd love for you to tell me how I'm making you feel." (5:47 pm)
 - Complainant responding, "Sopping wet, hot and bothered, a bit woozy, Super distracted, passionate and intense, and pretty confused.....✧💞💞💞💞💞💞💞💞 I cannot even think straight...." (8:57 pm)
 - Respondent responding, " ... the best part is I'm going to slowly thrust in you while kissing you all over, but I'll stop right before you explode in ecstasy, kiss you passionately, then bring you to the edge again and again..." (9:13 pm)
 - Complainant responding, " Oh, and btw, in #PlanetEva realms....💞 I'm not quite sure 'me exploding in ecstasy' is the best or most accurate depiction,,...💞 instead....Perhaps ...More like a gushing and ever-flowing and omni/present wonderful, powerful, intense, and Magical waterfall... 💞💞💞💞💞💞💞💞" and "So, perhaps in your own imagining it is you that will be 'exploding in

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- ecstasy' so to speaks..... as you passionately rub, touch, caresses, and slowly kiss... ..attempting to bring me to the edge... again ...and again...and again.... and again...." (11:11 pm)
- Respondent responding, "I love how you describe it! And imagine 73 hours straight of me cuddling, caressing, kissing, and doing *everything* to your exhausted, overexcited body over and over..." (May 26, 2018 at 5:15 am)
 - Complainant responding, " Yes, I can imagine it....Can you though? that's the question ☐ Plus, when are we going to get 73 hours?.....I have some deep-seated theories on how to eventually help and fix my neck and back....But they are layered, intricate, detailed, and intimate.....It'll take lots of time though, since it took 33 years for me to get this way and it's a deep-seeded mess....Lots of lovemaking." (May 26, 2018 at 7:07 am)
 - Email from Complainant on May 25, 2018 (titled "Fahrenheit 451"), references the broader context of the conversation at this point, with both parties participating in sexual language (**Exhibit L2**):
 - Complainant asking respondent how it happened that he called her "babe" and stating, "And yes, it really did make me feel a certain way when you called me that." (8:27 pm)
 - Respondent responding "I'll whisper it in your ear while we're making love and you're in ecstasy" (8:30 pm)
 - Complainant responding, "Yeah....Stuff Like, ...you whispering my name, in my ear.....followed by how much you like itAnd how good it makes you feel.... ☺" (10:19 pm)
 - Respondent responding, "... and me teasing you and not letting you gush with ecstasy until you admit that you love me ... then as you moan it I'll whisper in your ear 'mmm eva' as you overflow and release your magic waterfall (better?)" (May 26, 2018 at 5:08 am)
 - Complainant responding, " Yes, better ☺" and "Also, you may whisper a lot more than just 'mmm eva.'" (May 26, 2018 at 6:57 am)
 - Respondent responding, "Now I'm going to have a hard time working as I imagine sliding deliciously in you over and over while you moan and I kiss you & whisper in your ear about how good you feel" (May 26, 2018 at 7:07 am)
 - Complainant responding, "Ecstasy is never frustrating, is it ? Even wreathing in anticipatory and delicious ecstasy sounds nice....BUT WAIT.... I almost just missed this other message below about you deliciously, slowly, and ever so intimately sliding inside of me....So we can both feel every intense sensation along with it.... both moaning in pleasure....You may not be even tell me or whisper on my ear how it makes you feel.... Might be a bit surprisingly and overwhelming....Too much ✨💦💦💦💦💦💦💦💦💦 Even without the waterfalls powerfully flowing and activated..." (May 26, 2018 at 7:31 am)
 - Email from Complainant on May 26, 2018 (titled "How will I get work done?" sent at 7:55 am), references Complainant stating that she is "yearning to eventually test my theories, over time...." (referring to the theory that requires "lots of lovemaking" to ease her chronic pain). **Exhibit M2.**
 - Email from Complainant on May 26, 2018 (titled "Where did my buddy go" sent at 8:21 am), references Complainant asking where the "romantic, kind, and sweet nick" went, expressing that she is mad at Twitter for "sending your romantic feelings out the door!!!" and that she does not like it when Twitter upsets the Respondent and his "romantic vibe slips away." **Exhibit N2.**
 - Email from Complainant on May 26, 2018 (titled "Totally worn out" sent at 7:42 pm), references Complainant telling Respondent to " Reread the one about my theories... Of how we can heal me..." **Exhibit O2.**
 - Email from Complainant on May 26, 2018 (titled "Magical Waterfall" sent at 9:38 pm), references Complainant telling Respondent that she is "super sensual and sexual and passionately intense and I don't you were understanding how sopping wet you were making me (or that I could be) with all your romantic stories ... and sometimes it makes me want to gush all over," and that she can "gush" and stop whenever she wants to and that she can "gush for infinity or at least for days," and she asks if Flor copy and paste her theory into a new email and "let me know if that's something you think you'll be able to help me with and

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that we should work on." Also references Complainant sending a follow-up email sent at 9:38 pm where she states, "I do think it can eventually heal me though....My theory...." **Exhibit P2.**

- Email initiated Complainant on May 26, 2018 (titled "Where are you??" sent at 10:05 pm), references Complainant stating, "Send me a story!!!" **Exhibit Q2.**
- Email from Complainant on May 26, 2018 (titled "Oops" sent at 10:26 pm), references Complainant stating, "Send me more stories to wake up to and I need to know your response to the theory." **Exhibit R2.**
- Email from Complainant on May 26, 2018 (titled "You sent me stories?" sent at 10:30 pm), references Complainant stating, "Send me stories !!!" **Exhibit S2.**
- Email from Respondent on May 26, 2018 (titled "Theory" sent at 10:54 pm), references Complainant asking Respondent for a response to her theory and asking "I want to know if you're willing to help me in those ways and what you think of my theory." Also references Respondent responding, "I want to make love to you in RL [real life] Eva, and I'll do anything you need to help you with your theory." **Exhibit T2.**
- Email from Complainant on May 26, 2018 (titled "You have me feeling a certain way" sent at 10:57 pm), references Complainant responding to one of Respondent's sexual messages by saying, "I imagine you deep inside me, but I keep pushing you out with how 🍆🍆🍆 I am and it keeps blowing your mind because you cannot understand what's happening because you have experienced what I'm saying in such a way before... in your lifetimes.....And you keep wanting more and more and more....Trying to get to the source of all waterfalls ..And even when you think you may have found it... your not quite there yet....And I do know if we'll get there... but if we ever do something magical will Happen that neither of us can even begin to imagine yet..." **Exhibit U2.**
- Email initiated by Complainant on May 27, 2018 (titled "❤️" sent at 8:37 am), references Complainant initiating sexual communication. Also references Complainant stating on May 28, 2018 at 5:38 pm, "Why do I want to FEEL every inch of you DEEP inside of me, (as close and as deep as you can possibly get) and still pull you in closer to me in hot, wet, delicious ecstasy??" **Exhibit V2.**
- Email thread from May 27, 2018 (titled "Hugs..." sent at 10:52 am), references conversation regarding making love in Respondent's office. **Exhibit W2.**
- Email initiated by Complainant on May 27, 2018 (titled "Mixing and Melding" sent at 11:49 am), references Complainant sending artful images of a man and woman engaged sexually. **Exhibit X2.**
- Email initiated by Complainant on May 27, 2018 (titled "Heat is literally radiating" sent at 11:55 am), references Complainant stating that "I'm so hot for you ..." **Exhibit Y2.**
- Email initiated by Complainant on May 27, 2018 (titled "Every email that's not from you ..."), references the broader context of the conversation at this point, with both parties still participating in sexual language (**Exhibit Z2**):
 - Respondent stating, "mmm eva, I want to explode deep inside you and mix my flow with yours..." (11:20 am)
 - Complainant responding, "Mmmmmmm Re: mixing your flow with mine 😊😊😊 🍆🍆🍆🍆🍆" (11:24 am)
 - Respondent responding, "so risky but you feel sooo good that I can't stop myself and I pull you in deep and explode in you over and over" (11:27 am)
 - Complainant responding, "And I want it... so bad..." (11:28 am)
 - Respondent responding, "Can you just imagine our flows mixing inside you, mmm so risky but so deliciously sensual that we can't stop ourselves." (11:30 am)
 - Complainant responding, "I can imagine it too well....But you CANNOT imagine how wet you just got me right now... you simply cannot.....I'm so swollen and wet for you... Plus, I'm becoming ultra-sensitive to top it off.....And imagining 'us' - 'mixing inside of me,' as I gush all over You (pushing you out while tightening around you) as we Magically melt, dissolve and Ebb and Flow together as ONE consciousness ☐😊😊😊 #Magic" (11:36 am)
 - Complainant responding again, "I've never wanted that so badly... 😊.....☐.....But I want it now, with YOU" (11:51 am)

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- Complainant responding again not to overlook her previous comment. (May 28, 2016 at 5:16 pm)
 - Respondent responding that he will stop sending romantic stories. (May 28, 2018 at 5:21 pm)
 - Complainant responding that Respondent misread her email and that she does not want him to stop. (May 28, 2018 at 5:26 pm)
 - Complainant responding again that she wants what Respondent has described with him. (May 28, 2018 at 5:30 pm)
- Email initiated by Complainant on May 27, 2018 (titled "Still Our Song?" sent at 11:17 pm), references Complainant referring to a song she sent to Respondent as their song. Also referencing Respondent agreeing on May 28 at 5:03 am. **Exhibit A3.**
- Email initiated by Complainant on May 28, 2018 (titled "'stocking' NVF; #Unfollow, lolnotLol" sent at 10:50 am), references Complainant seeing that Respondent "liked" a "tweet" from someone whom she does not like (based on the content of the person's "tweets" and the person's appearance) and expressing her unhappiness that Respondent "liked" it. **Exhibit B3.**
- Email initiated by Complainant on May 28, 2018 (titled "Messages" sent at 10:45 am), references Complainant expressing that she is unhappy that Respondent has not responded to all of the emails she has sent. Also references Respondent responding at 12:13 pm that he has been busy working on a presentation he will be delivering at a conference. **Exhibit C3.**
- Email initiated by Complainant on May 28, 2018 (titled "Maybe it's just my imagination" sent at 12:59 pm), references Complainant telling Respondent she sent 33 messages that Respondent has not replied to and that he seems too busy to care. **Exhibit D3.**
- Email from Complainant on May 28, 2018 (titled "I think I'm caught up..." sent at 5:08 pm), references Complainant responding to Respondent after he has stated that she can ask for romantic stories, "But I'll want MORE!!! And MOREand MORE...." **Exhibit E3.**
- Email initiated by Complainant on May 28, 2018 (titled "Oh and btw"), references (**Exhibit F3**):
 - Complainant stating, "You got me all 🍷🍷🍷 again with all your messages...Like through my clothing again and stuff and no caresses...Why do you keep doing that?" (6:28 pm)
 - Respondent responding, "You are so deliciously sexy, that's why. Please tell me I'm the only one that's made you this way over and over and over again." (6:51 pm)
 - Complainant responding, " Yes, over and over and over and over again..." and " Please tell me *I'm the only one way that's made you feel 'this way' over and over and over and over again..." (6:59 pm)
 - Complainant responding again, " Plus, I've already told you that I've never wanted 'that' so badly <what you keep describing to me in such vivid details>...And I do not know why I want 'that' with YOU now..." 7:02 pm)
 - Respondent responding, " I know, and all this doubt, just makes me want to lose myself in you even more and whisper your name and how delicious you are over and over , and how you're turning me on beyond my power to resist ... mmm Eva nooo" (7:03 pm)
 - Complainant responding, " So I'm not the only one that makes you feel 'this way' and 'that way' then? Hmmm. Haha" (7:09 pm)
 - Complainant responding again, " And yes, I do have this 'doubt' ...About what you are telling me..." (7:12 pm)
 - Complainant responding again, " And WHY do keep saying, 'mmmm Eva nooo,' I'd rather hear you say, 'mmmm Eva wow yesss! Yesss! Don't stop.' <over and over and over again> As you encourage me on ...< and then beg and plead for more>.....Because there is more....There's always more...🍷🍷🍷🍷 " (7:18 pm)
- Email initiated by Complainant on May 29, 2018 (titled "Summer GA" sent at 6:33 am), references Complainant requesting that Respondent communicate with administrative staff regarding the assistantship. **Exhibit G3.**
- Email from Complainant on May 29, 2018 (titled "Diagram..." sent at 11:06 pm), references Complainant responding to a diagram Respondent made, "This is adorable and sexy that you did this..." and again on

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May 30, 2018 at 12:47 am "Not sure why it's sexy to me, lol 😊 picturing you doing this... but it is" **Exhibit H3.**

- Email from Respondent on June 1, 2018 (titled "Good morning!" sent at 4:57 am), references Respondent expressing excitement about his research. **Exhibit I3.**
- Email initiated by Complainant on June 1, 2018 (titled "Annoyed" sent at 8:32 pm), references Complainant indicating she is annoyed because she does not feel like Respondent is reading any of her emails. **Exhibit J3.**
- Email initiated by Complainant on June 1, 2018 (titled "Emails and time delays etc" sent at 9:44 pm), references Complainant indicating she is annoyed because she does not feel like Respondent is reading or providing good responses to any of her emails, stating "#Ridiculous #unfollow #youAreReillyWhite". **Exhibit K3.**
- Email thread on June 2, 2018 (titled "Believe it or not"), references the broader context of the conversation at this point, with Respondent responding less frequently and Complainant expressing discontent (**Exhibit L3**):
 - Respondent telling Complainant, in response to her indication that she couldn't sleep (Complainant has indicated she has a toe injury that is painful), "Hang in there B! Imagine me tickling your toes hahaha" (7:37 am)
 - Complainant responding, "Doesn't sound sexy, nor comfortable lol" (8:07 am)
 - Respondent responding, "haha but your in pain, so I can't tell romantic stories during pain." (8:27 am)
 - Complainant responding, "Hey, it's okay if you don't like me anymore and think I'm difficult to communicate with, but you don't have to make up silly stories about why no romantic stories while in pain ;) ha! Dork. Probably the only thing that would help actually... lol not lol." 8:41 am)
- Email initiated by Respondent on June 3, 2018 (titled "But please realize..." sent at 5:24 am), references Respondent telling Complainant that he has a lot of work to do and may not be able to respond immediately to her emails. **Exhibit M3.**
- Email initiated by Complainant on June 3, 2018 (titled "I care...." Sent at 5:26 pm), references Complainant indicating that Respondent is not like professors she has complained about to him and that "I've never had a class with you, I'm not your student." Also references Complainant indicating at 1:26 pm that she cares about Respondent and at 1:29 pm asking him, "Just don't hurt me, or break my heart... pls... ❤️ I beg of you.....as you've done in past lifetimes.... apparently..." **Exhibit N3.**
- Email from Complainant on June 3, 2018 (titled "My toe 😊" sent at 8:49 pm), references Complaint stating, in reference to her injured toe, "I wish I could just rest my toe on your chest.... I meant rest my head on your chest 😊😊 Although resting my foot on your chest in such a strategic (and romantic) way could also be helpful..., can you picture it?" **Exhibit O3.**
- Email initiated by Complainant on June 4, 2018 (titled "Fahrenheit 451 – Overall thoughts" sent at 1:52 am), references Complainant beginning a discussion about the book and related her and Respondent to two of the characters, stating, "Yet, in our past lives though B, this is NO DOUBT us...." and "...I wonder if we make love in the book, I currently do not recall ..." **Exhibit P3.**
- Email from Complainant on June 4, 2018 (titled "My toe 😊" sent at 9:48 pm), references Complaint asking Respondent again "Can you picture it though?" Also references Respondent responding, "LOL @ pressing your toes into my chest!" and Complainant responding, "Can you picture it? I can imagine it...." **Exhibit Q3.**
- Email from Complainant on June 4, 2018 (titled "The Cycles – 28 days." sent at 10:24 pm), references Complainant stating, after Respondent has referred to her as babe, "(I love you you [sic] call me babe too, btw) 😊like I told you before, it really makes me feel certain ways." **Exhibit R3.**
- Email initiated by Complainant on June 4, 2018 (titled "Pls just send me a few" sent at 11:47 pm), references Complainant asking Respondent to send her a few messages between 8:11 and 11:11 am the next day so that she can wake up to them. **Exhibit S3.**

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- Email thread on June 5, 2018 (titled "💬💬💬" and then changed by Complainant to "👉👉👉"), references **(Exhibit T3)**:
 - Complainant stating, "i'm fine if you're romantic stories do not come to pass...." and "i also know that i enjoy your 'romantic stories' and they do make me feel certain ways....." (8:06 am)
 - Respondent responding, "And imagining is more fun anyways!" (11:44 am)
 - Complainant responding, "You think so?? ☐ Perhaps in some cases☐😊 Not necessarily all though 😊" (11:48 am)
 - Respondent responding, "Like when I' whispering 'mmm Eva...' over and over in your ear?" (11:54 am)
 - Complainant responding, "Yes, exactly... like those times! 😊 Do you think imagining will be more fun?!" (11:57 am)
 - Complainant responding again, "And now I'm wet again..." (11:58 am)
 - Respondent responding, "... and we're doing it with no protection because it feels so good and I know I should stop but all I can do is whisper your name over and over 'Eva, mmm'" (12:02 pm)
 - Complainant responding, "Yes, but of course.....Because it's meant to be....😊 I can now feel heat emanating off my head and body... almost instantly,.. 🔥 🔥 🔥" (12:05 pm)
 - Complainant responding again, "Babe, You won't be able to stop once you feel me....I wish you would understand that...." (12:07 pm)
 - Complainant responding again:
 - N: "Eva, mmmm, Eva..... WHY are you so slipping, sopping, splashing wet?!!!"
 - E: "I'm not yet, but you're getting me that way, mmmm, Nick! Don't stop, keep going!" 😊
 - N: "mmm, but you're soooo wet. I want so much more...."
 - E: "oh, trust me babe, there's always more!" 😊
 - You'll be like licking your lips in pleasure.... either that or licking my lips in pleasure... 😊 (12:25 pm)
 - Respondent responding, "Just imagine me on top of you, our bare skin sliding over each other, my mind telling me to stop before I explode, but my body thrusting deeper in you... while I whisper 'no Eva we have to stop... mmm Eva, we have to ... mmm Eva'" (12:29 pm)
 - Respondent responding, "Okay gotta get back to work, but you said to send you good vibes. That was it. Feeling better?" (12:30 pm)
 - Complainant responding, "Mmmmmmm soooo much better! But also sooo 🍆🍆🍆" (12:32 pm)
 - Complainant responding again, "I can imagine this so clearly 😊" and "Only thing is... I do not think you can imagine how sopping wet we will both be, slipping and sliding all over each other with Eva's magical slip and slide natural fountain juices all over the place ... And yes, thank you for the delicious vibes... you have no idea how you've got me feeling in my exhaustion even...." (12:39 pm)
- Email initiated by Complainant on June 5, 2018 (titled "Our past lives song" sent at 11:16 pm), references Complainant indicating that the song "Past Lives" by Borns is their song. **Exhibit U3**.
- Additional mail threads on June 5, 2018 (titled ""But like....," "Nick's Flower's and Fountain," "5:05," "You okay though?," "Running Back to You," "I think I caught up and responded to," " 🍆🍆🍆🍆🍆🍆🍆🍆🍆," "Horoscopes 06/05/18," and "Hm? Text"), reference additional sexual communication and the last day that Respondent sends any sexual content, implicit or explicit. **Exhibit V3**.
- Email on June 6, 2018 (titled "Eva Chavez PA Contract"), references administrative staff following up regarding the assistantship details, Complainant offering to chat with respondent regarding the assistantship and suggesting 17 hours in one pay period and 17 hours in the next, Respondent responding that he suggest 4 weeks of 8 hours and that "this gives room for feedback and changes," and Complainant responding that she does not understand what he means by "feedback and changes" and that his time suggestion matches hers and they should chat about it. **Exhibit W3**.
- Email initiated by Complainant on June 7, 2018 (titled "Plus,"), references **(Exhibit X3)**:

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- Complainant expressing that Respondent was "not in romantic or communicative moods anyway....and also felt very far away." (12:30 pm)
- Respondent responding, "Ya, just exhausted. Not very romantic when tired!!!" (5:52 pm)
- Complainant responding, "yeah you weren't very nice nor romantic either..." (June 8, 2018 at 5:19 am)
- Respondent responding, "haha sorry! But it's a feeling and when I'm tired or I'm in research mode, I'm in a different mindset." (June 8, 2018 at 5:48 am)
- Complainant responds, "Yeah but your totally disregarding me or my mindset... and a lot of what you skimmed over too..." (June 8, 2018 at 5:52 am)
- Respondent responds, "I understand. And will do what I can to help!" (June 8, 2018 at 9:59 am)
- Complainant responding, "How can you help me though B?" June 8, 2018 at 1:27 pm)
- Respondent responding, "First, by understanding (eventually), second by giving hopefully helpful advice" (June 8, 2018 at 4:19 pm)
- Emails on June 7, 2018 (titled "Good morning!", " Same page 🐱", "Aren't you happy ...", "I should've just stayed bedridden"), reference Respondent replying to Complainant expressing that she is unhappy with his lack of responses by saying that his schedule is busy and that the evenings are a better time for him to respond. **Exhibit Y3.**
- Email from Complainant on June 8, 2018 (titled "Good morning!" sent at 6:43 am), references Respondent explaining a research idea and suggesting that they co-author a paper on it, and Complainant stating that she loves the idea and that "it actually kinda terms [sic] me on a bit researching flowers reproducing lol" **Exhibit Z3.**
- Email from Complainant on June 8, 2018 (titled "Anyways" sent at 1:28 pm), references Complainant responding to Respondent's statement that they are friends and will work through misunderstandings by stating that there is a problem with their friendship. **Exhibit A4.**
- Email initiated by Complainant on June 8, 2018 (Titled "Fyi" sent at 2:00 pm), references Complainant stating, "I think I lot of those messages and rambles o [I] sent earlier may require more of a response than what you briefly gave, thx though" **Exhibit B4.**
- Email thread on June 9, 2018 (titled "Disaster of a day"), references (**Exhibit C4**):
 - Complainant stating, "Just to clear things up and clear up your confusion - I typically want a response to EVERYTHING!!!" and "No babe wtf!!! I want responses! I 100 want responses to everything or else I would not waste my damn time with it all!" (3:04 am)
 - Complainant wondering if their relationship is different than the friendship she had with Reilly White (which ended with him telling her he could not communicate with her any longer) and clarifying "other than that it's more complex and I feel VERY different towards you." (3:04 am)
 - Respondent telling Complainant that he can't respond immediately to her emails, that she "messages a lot", that "Maybe we can't be super close friends like it started to be in the beginning, and maybe yes it was because it was a new experience for both of us (and that numerology you showed me was pretty convincing about things not being a coincidence). But now that I'm beginning to understand the pain you're in and the end-of-cycles, maybe that's not the kind of friend you need" and that "Anyway, different topic: Re: research assistantship: 8 hours, four weeks, diagram the flower reproductive ecosystem (pollen birds, bees), co-author paper. Shall we do it? That would be fun." (6:00 am)
 - Complainant responding that she does not understand the "circumstances" that make it so Respondent can't respond to her emails and, as it relates to the offer of the assistantship, "I do not think we should do it (for various reasons) ... mainly because I truly valued our friendship that much more, but now I'm wondering where our friendship even stands based off your responses to me... but I did not want to complicate things and how much I appreciate you, for such a small amount of money and hours when I already know for I fact I will work WAY more than 8 hours per week and already have, and I do not want to be bamboozled either, and I wanted more so to maintain our friendship..... " Also Complainant indicating she would like work with Respondent

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outside of the University and that "I want to work with you, and I want to help you. And I do think we kind of NEED to work together, for various and different reasons as well. (7:27 am)

- Email initiated by Complainant on June 9, 2018 (titled "Inbox" sent at 6:40 pm), references Complainant indicating she misses receiving messages from Respondent and mentioning again, as it relates to Respondent's research idea, "I also wasn't kidding that it kind of turns me on, when I said that in my message the other day." **Exhibit D4.**
- Email from Respondent on June 9, 2018 (titled "Horoscopes 06/09/18" sent at 8:34 pm), references Respondent telling Complainant, after she has asked if he will acknowledge or respond to her earlier emails, that he will respond to some but not all of them. **Exhibit E4.**
- Email initiated by Complainant on June 9, 2018 (titled "I missed your messages" sent at 8:54 pm), references Complainant expressing that she misses receiving messages from Respondent. **Exhibit F4.**
- Email initiated by Complainant on June 9, 2018 (titled "Angus and Julia Stone - The Wedding Song" sent at 9:41 pm), references Complainant sending a link to a song and stating "Don't worry, it's not about me, or you, or 'us'...you've already killed all the romance... 'completely' ;) <it's gone> :/" **Exhibit G4.**
- Email from Complainant on June 10, 2018 (titled "Angus and Julia Stone - The Wedding Song" sent at 7:43 am), references Complainant stating, "Yeah, at least you still like her voice even though you've killed all things romantic lol" **Exhibit H4.**
- Email from Complainant on June 10, 2018 (titled "Running Back to You" sent at 2:40 pm), references Complainant responding that Respondent does not remember the song she forwarded, "Probably because you've killed romance. So you just straight over looked it!" **Exhibit I4.**
- Email from Complainant on June 10, 2018 (titled "IMPORTANT: TASKLIST" sent at 3:02 pm), references Complainant indicating "I'm also a bit annoyed you haven't or cannot make time to chat about propaganda or PA-ship or working together or anything...And if you're just going to take that angry email of mine at face value (the response to your points 0-5, that made me angry and respond reactively and abruptly), and not talk about it or clear-up any confusions on what I was telling you, or discuss possibilities of working together.... then you truly don't get me." **Exhibit J4.**
- Email from Complainant on June 11, 2018 (titled "Eva Chavez PA Contract" sent at 2:30 am), references Complainant stating that maybe they could still do the assistantship but that they needed to discuss if it would still work. **Exhibit K4.**
- Email from Respondent on June 11, 2018 (titled "IMPORTANT: TASKLIST" sent at 8:36 am), references Respondent responding to Complainant that she indicated the assistantship was not a good idea and that he was going to use the money to buy brainwave equipment instead, also that they could still work on the other personal projects they discussed. **Exhibit L4.**
- Email from Complainant on June 11, 2018 (titled "Saturday Sun" sent at 2:30 pm), references Complainant indicating she is 5'7"-5'9" tall (in response to Respondent asking how tall she was) and that "I suppose it's a good thing that I think high heels are incredibly foolish, and that for some reasons you have killed the art of Romance, Lol not lol" **Exhibit M4.**
- Email initiated by Complainant on June 11, 2018 (titled "So what do you have against" sent at 3:17 pm), references Complainant stating, "So what do you have against chatting with me, just curious..." **Exhibit N4.**
- Email from Complainant on June 11, 2018 (titled "IMPORTANT: TASKLIST" sent at 10:58 pm), references Complainant expressing that Respondent was wrong to assume she did not want the assistantship and that she is offended he would think that. **Exhibit O4.**
- Email from Complainant on June 11, 2018 (titled "1984 & Fahrenheit 451" sent at 11:11 pm), references Complainant expressing that her feelings are hurt by Respondent seeming to back out of personal projects they had discussed and stating that "the only reason i said we should not do the PA ship is because i did not understand the whole 8 hours thing and i have never worked on anything for less than 8 hours in a day more or less a week and i did not want to get bamboozled when i would literally be immersing myself into it...." **Exhibit P4.**

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- Email from Respondent on June 12, 2018 (titled "Eva's Summer Hours" sent at 8:13 am), references Respondent responding to a request for information regarding the assistantship and informing the University that he decided to use the grant money for equipment and that he had already informed the Complainant. **Exhibit Q4.**
- Email from Respondent on June 12, 2018 (titled "1984 & Fahrenheit 451" sent at 6:49 pm), references Respondent stating the way he recalled events was that he asked Complainant if she "wanted to do 8 hours a week, for four weeks, on the process of flower reproduction. And you said you no. Which is fine." Also referencing Respondent stating that he "should be a real friend, not a romantic friend." **Exhibit R4.**
- Email from Complainant on June 12, 2018 (titled "1984 & Fahrenheit 451" sent at 8:30 pm), references Complainant responding to Respondent's previous email that she "begged" Respondent to talk about the assistantship and that he decided to move on without any discussion with her. Also references Complainant stating, "And just some insight for you; it is not really those broken promises and your short email responses that kept me going...(nor the broken friendship promises). In actuality, it was instead the idea of a 'romantic friend,' and the sparks of those thoughts (that came out of nowhere), and a lot of those aspects that I had not thought about or felt in a while...that kept me going..." and "In the process, you helped me realize that is the type of friend I actually need, more so a 'romantic friend' or person...or at least someone who can grasp me (PlanetEva) in those aspects" **Exhibit S4.**
- Email initiated by Complainant on June 17, 2018 (titled "Your messages" sent at 4:34 pm), references Complainant expressing to Respondent that she misses hearing from him. **Exhibit T4.**
- Email initiated by Complainant on June 20, 2018 (titled "3:33 thoughts and well wishes" sent on June 20, 2018 at 3:33 pm), references Complainant stating, "I hope you're writing is coming well. I'm not doing the best, and I'm tired of living through this; the pain, the facades of others, false friendships, words and promises empty and holding no meaning....I do not want to live through any of it any longer." Also references Respondent responding on June 21, 2018 at 7:14 am, "Yep, going well. I just had to run analytics on this #solar, that's the part that's taking a long time. It's based on a revision of a paper I had done earlier on how to spread scientific information virally" and Complainant responding "glad things are going so well for you and you're just going to disregard anything about me and my desperate pleas and suicidal nature of literally not wanting to deal with any of this anymore....THANKS FRIEND! KINDA RUDE OF YOU! But hip hip hooray for you and glad it's going so well!!" on June 21, 2018 at 8:16 am. **Exhibit U4.**
- Email initiated by Complainant on June 21, 2018 (titled "These flowers though! ☺" sent at 9:06 pm), references Complainant sending Respondent images of flowers that she saw during the day. Also references the broader context of the conversation on June 21, 2018, with Complainant sending alternating emails expressing anger at Respondent for not following through on his promises and song lyrics and updates about her day. **Exhibit V4.**
- Email from Complainant on June 22, 2018 (titled "Re: Catch" sent at 1:50 am), references Complainant expressing her anger that Respondent followed up on an earlier agreement to play catch by suggesting that they throw a football next time they see each other at the Anderson School of Management rather than throwing a baseball at a park away from the campus. Also references Complainant stating that Respondent was "the one that first called me babe, and lover, and all sorts of things, and asked if you could kiss my neck while caressing my back; and a whole series of other intimate aspects and empty promises; and then you are just going to randomly pretend like none of [it] happened and send me this ridiculous couple line email and tell me you want to be my 'real friend' now when you never treated me as a 'real friend' nor even responded to any of my commentary WHATSOEVER in regards to anything of that or why you tried to pull back and pretend non[e] of it happened it the first place, and like if we were actually 'real friends' as you claim to be?" and "I did not really see you as the type of person to behave in such ways and manners, but i would truly appreciate more of a response in regards to all of this." **Exhibit W4.**
- Emails initiated by Complainant on June 24, 2018 (titled "Mary Margaret Rogers" and "Man on Pause"), reference Complainant threatening to send clips of earlier communication of a sexual nature composed by Respondent to the department chair and administrative staff if Respondent does not respond to her. Specifically, "Imagine me replying to those UNM PA-ship emails (with all those ladies included) and say,

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'Has anybody heard from Nick? He sent me the attached correspondence on June 5th, and I have not heard much from him since?' I do not know what any of those ladies' faces look like (as I have not met them in person yet, other than Robin and her intense black eye that one time)...Nonetheless, even though I do not know what their faces look like, it's still fun to picture and imagine what their faces would look like if I were to send them those screenshots (attached) with that short message through the UNM email," and "I think you'll be alarmed once I actually do what I say I was going to do in that email, to the ladies on the PA-ship email, simply to prove a point in regards to your non-responses as well as ignoring my messages'" and "I'm likely going to have to tell him [Raul Gouvea] that I sent you all those messages, screenshots and videos of him because as of right now, that's really the only thing you could hold against me; and he is my friend so I would rather just be honest with him as to what I did and why I did it, and also so that you do not have anything to hold against me...." **Exhibit X4.**

- Email initiated by Complainant on June 25, 2018 (titled "We need to chat" sent at 11:00 am), references Complainant sending a screenshot of a phone call she made to Respondent and stating, "And if you are not going to have any respect at all to respond to my messages, then please return my phone calls, because I will continue to contact you until all of this is addressed.... and if you continue to avoid me and my messages, I will just have to address it all directly with Mary Margaret Rogers because trust me, it will be addressed!" **Exhibit Y4.**
- Text messages sent by Complainant beginning on June 25, 2018 through July 2, 2018, reference Complainant threatening to send clips of earlier communication of a sexual nature composed by Respondent to various individuals at the University if Respondent does not respond to her. **Exhibit Z4.**
- Email initiated by Respondent on June 26, 2018 (titled "Got your text" sent at 7:08 am), references Respondent stating, "Yo Eva, got your message. Well here's the thing, at the end of the semester, when we first started communicating, I had a lot of free time, but after my MIT presentation many research opportunities opened up so I've been focusing on my research — that and a new online course, which has to be completed by July. Bottom line: these things have to get done over the summer, so I don't have a lot of free time anymore. I'll be minimizing my time on all communications and social media until I finish. But I will get to your messages eventually. Stay well." **Exhibit A5.**
- Email initiated by Complainant on June 27, 2018 (titled "Just curious though...." sent at 10:41 pm), references sending Complainant stating, "You want me to just continue heckling you until I do things that you would not believe I would do based off how you've acted and treated me..... ? Just go ahead and respond to that and it would be great ... the more you do not respond, the more it will continue to become an issue.... like I already told you...." **Exhibit B5.**
- Email initiated by Complainant on June 28, 2018 (titled "You, and your cousin too" sent at 6:40 am), references Complainant stating, "I suppose I'll await to see if or how you respond to me..., (and all my countless messages and direct questions that you have not responded to) before I ignorantly and carelessly forward any emails on....or create and send new ones to people I should not be sending those emails to under these conditions...." Also at 3:49 pm, Complainant stating, "Just want to make sure that you received this, that you understand the importance of it, as well as the fact that I do indeed expect a response from you. If you do not respond I'll either forward it on or written [sic] it for Mary Margaret Rogers, Kathryn Jacobson, Craig White and/or whoever else needs to address it since you are not addressing it responding to any of it" **Exhibit C5.**
- Email initiated by Complainant on June 29, 2018 (titled "Fw: The 'Cool People' Club," sent to Respondent's UNM email address at 6:33 am), references Complainant stating, "and in reality, next week i will look back on this all and laugh and think 'wow, that was intense, and perhaps irrational too,' or maybe even 'i should have never sent those intimate messages nick sent me to MMR or KJ, or even CW' or to any of those other ladies just to smile about what their (as well as Nick's reaction must have been)- but when i am calm, cool, and collected and thinking those thoughts.(and humorously laughing in hind sight)... and you are wondering why i caused you so much stress and trouble and why i did this all.... I am certain that you will not be laughing next week, when i am... and when all the intensity has died down," and " and the most hilarious part of all of this is that all you had to do was get in touch with me and chat with me like a real man and

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person (and not the child that you are acting like by avoiding me) and literally none of this would have happened," and a quote from an earlier email " 'if you're my friend, truly - then you can know you can TRUST me 100%. that i will never intentionally hurt or attack you, frustrate you etc. However, on the other hand, if you are not my friend, that is a different story and i can 100% not make those promises....'" **Exhibit D5.**

- Text message initiated by Complainant on June 29, 2018 at 12:25 pm, references Complainant stating, "Hey, I promise I won't do any of those things I said I would do, not send you any more emails. Something happened, and it's not good. I genuinely apologize fir [sic] any distress I have caused you. It really was not intentional. Just know that you hurt me, that's all." Also references text message sent at 12:26 pm stating, "I'll leave you alone now. If of [sic] you ever do decide to message me, and you never hear back. Please do not be alarmed as well. Thank you sincerely for that 2-weeks or so of happiness that you brought into my life... of which I truly thought was authentic and genuine. I thought you were a supportive friend. Thanks for that, whether it was real or not. Take care nick [followed by emoji of a crying face, a flower, and praying hands]." **In Exhibit Z4.**
- Text messages initiated by Complainant on July 2, 2018 at 8:07 am, references Complainant stating that she has been asked to meet with Kathryn Jacobson and that "Wish we would've touched base prior to and after you blatantly ignoring me because I'm confused as what to say and not say,..but I suppose I'll just take your previous advice" and referencing Respondent's prior email encouraging Complainant to be honest in providing feedback. **In Exhibit Z4.**
- Text message initiated by Respondent on July 2, 2018 at 9:56 am, references Respondent stating "Please stop communicating with me." **In Exhibit Z4.**

ADDITIONAL DOCUMENTARY EVIDENCE SUBMITTED IN RESPONSE TO THE DRAFT REPORT

- Additional emails in the thread titled "2018 Mid-Year Investment Outlook...Facebook CoFounder Chris Hughes on Fighting Inequality...Taking China's Stock Market Global." These emails replace the former **Exhibit X1.**
- Documents provided to OEO by Complainant on July 27, 2018. **Exhibit E5.**

VI. ANALYSIS

When assessing whether or not conduct rises to the level of a policy violation, OEO assesses the totality of the record, including the nature of the conduct and the context in which the alleged conduct occurred. Unless a "preponderance of the evidence" supports a finding the alleged conduct occurred, individuals are presumed not to have engaged in the alleged conduct. To establish by a preponderance of evidence means to demonstrate something is more likely so than not.

Sexual Harassment (Quid Pro Quo)

When considering a claim of Sexual Harassment (Quid Pro Quo), OEO considers:

1. Whether submission to sexual conduct was made either explicitly or implicitly a term or condition of an individual's employment or academic advancement; or
2. Whether submission to or rejection of sexual conduct by an individual was used as the basis for employment decisions or academic decisions affecting the affected party.

Respondent has not challenged the authenticity of the communications. There can be no dispute that the conduct at issue was sexual in nature. (**Exhibits H2** ("Cuddling and all" and "It's slow and excruciatingly romantic), **I2** ("and imagine me in the shower with you too"), **K2** ("I'm going to slowly thrust in you while kissing you all over, but I'll stop right before you explode in ecstasy, kiss you passionately, then bring you to the edge again and again.")

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See also, Exhibits L2, T2, Z2, and T3. Respondent admitted to first making comments of an explicitly sexual nature. **(COR.)**

Further, OEO finds that the chronology of communications establishes that Complainant's receptiveness and reciprocation of Respondent's sexual overtures was an implied term or condition of her hire by Respondent as a graduate or project assistant. An implicit term is the opposite of a direct statement. Merriam-Webster defines "imply" as including to "enfold, entwine."⁶ The parties first discussed an employment relationship **(Exhibits E1, J1, O1 and W1)**, then Respondent initiated sexual overtures **(Exhibits G2, H2, I2 and J2)**, and then the parties exchanged intimate, personal and overtly sexual communications. **(Exhibits K2 and T3)**. An employment relationship remained possible throughout all of the sexual communications **(Exhibits W3 and Z3)** until Respondent first withdrew his romantic and sexual interest in Complainant **(Exhibit C4)** and then, the assistantship opportunity. **(Exhibit L4)**.

Essential to this analysis is UNM Policy 2215: Consensual Relationships and Conflicts of Interest. Although OEO does not evaluate whether Policy 2215 has been violated, it must consider the strong University interest present in that policy to avoid difficulties which arise from relationships like that at issue here, due in no small part to the Policy's explicit recognition of the "inherent power differential" between a faculty member and a student which can render consent difficult to assess or construe it to be coercive. While Complainant was never a student of Respondent's, he possessed considerable authority as she was a student in the graduate program in which he taught and she was his department chair's graduate assistant. In addition to Respondent's ability to affect Complainant's existing employment, the contemplation of an additional employment opportunity only further solidified the authority Respondent had over Complainant's situation. A reasonable college student in Complainant's position would feel pressure to please a person in Respondent's professional position. Respondent's reliance on Complainant's flirtations, apparent consent, and her failure to ask him to stop such communications **(COR)** ignores the inherent power he possessed to affect her employment (existing and potential) and possibly, her education at UNM.

Accordingly, OEO finds that it is more-likely-than-not that succumbing to Respondent's sexual written communications was implicitly a term or condition of Complainant's employment with Respondent.

Retaliation

When considering a claim of retaliation, OEO considers:

1. Whether the complainant engaged in good faith civil rights protected activity, such as opposing an individual or University's discriminatory conduct or practice, initiating a complaint with OEO, responding to an OEO complaint, acting as a witness in an OEO investigation, or requesting an accommodation for a religious practice or disability;
2. Whether the respondent had knowledge of the complainant's participation in protected activity;
3. Whether the complainant suffered an adverse employment or academic action after the respondent gained knowledge of the complainant's participation in protected activity; and
4. Whether the respondent took the adverse action because of the complainant's protected activity.

OEO first finds that Complainant engaged in good faith civil rights protected activity when she notified Respondent of her intent to report their sexual communications to administrators at the University. **(Exhibits X4, Y4, D4, Z4 and D5)**. Respondent suggests that Complainant's threats to forward their prior sexual communication to multiple individuals at the University was due to anger that he would no longer engage in the behavior and wanted to get revenge. **(COR)**. Such may be the case.⁷ That truth would not negate that Complainant nevertheless believed she

⁶ <https://www.merriam-webster.com/dictionary/implied> (December 7, 2018).

⁷ OEO disagrees that the evidence indicates Complainant's motive was revenge, but rather she presents as a very hurt individual grasping for some sort, any sort, of communication from a former lover.

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VIII. PRELIMINARY DETERMINATION

Given the above, OEO's preliminary determination in this matter is:

There is sufficient evidence to show it is more likely than not Respondent subjected Complainant to Sexual Harassment (Quid Pro Quo). Therefore, there is **A POLICY VIOLATION** under University Policy #2740 Sexual Misconduct.

There is sufficient evidence to show it is more likely than not Respondent subjected Complainant to Retaliation. Therefore, there is **A POLICY VIOLATION** under University Policy #2740 Sexual Misconduct.

OEO will move forward with these determinations unless additional new factual information can be provided. The additional information must reveal facts not yet discovered during the course of the investigation. Any additional information must be provided to OEO no later than five (5) business days of the date of this correspondence.⁹ All new factual information will be evaluated before a final determination is made.

A Final Letter of Determination will be issued if no further new factual information is submitted to this office. The Final Letter of Determination will state the formal findings and may contain recommendations. It will also provide instructions for appeal.

IX. NOTICE

Please be advised it is contrary to University of New Mexico policy and federal and state civil rights law to retaliate against any person and/or employee for having filed or participated in a discrimination investigation. This provision includes any witnesses who provided information during the investigation.



Sara M. Cliffe
OEO Investigator



Angela Catena
Title IX Coordinator



Francie Cordova
Director

cc: File

⁹ Due to the volume of evidence in this matter, the investigator is providing the parties with additional time to submit new additional information.